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[1]Citations to General Statutes, Rev. 1949 contain same provisions of law as in indicated citations in parenthesis to General Statutes, Rev. 1930 as amended and operative in the present case.

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[2]This citation contains the same laws operative in the present case under General Statutes, Rev. 1930 as amended except as to Sec. 98-i, C.S. 1947 contained in Sec. 470, G.S. 1949 and Sec. 99-i, C.S. 1947 contained in Sec. 483, G.S. 1949.

Supreme Court of the United States

OCTOBER TERM, 1949

NO.

JAMES BUTEAU
Petitioner

vs.

STATE OF CONNECTICUT
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

MAY IT PLEASE THE COURT:

The petition of James Buteau respectfully shows:

I

Summary Statement of Matter Involved

This case involves the procurement of two confessions of the petitioner and their admission in evidence to the jury against him in a trial in which the petitioner was convicted of first degree murder and is under sentence of death.

The petitioner contended in the Supreme Court of Errors and on trial that the procurement and admission in evidence of these two confessions deprived him of life and liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution, because the confessions were procured after the petitioner had been held incommunicado, in the private, secret custody of state police, for the purpose of obtaining a confession from the petitioner, committed to the police for this purpose by the coroner by virtue of an illegal warrant, without a presentation in court until twenty-five days after his arrest, being in violation of Sec. 54-h C.S. 1945 requiring "presentation with reasonable promptness before proper authority," and after having been subjected to persistent questioning for long periods of time, the first confession having been procured on the seventh day after his arrest and the second confession on the eleventh day after his arrest and before the petitioner had the benefit of counsel.

The petitioner was indicted jointly with one Albert Berard, on September 17, 1947, for murder in an attempt to perpetrate a robbery (R. 2). Separate trials were granted (R. 2-4).

On an appeal to the Supreme Court of Errors of the State of Connecticut, the judgment of conviction was confirmed on August 16, 1949 (R. 2252). A motion for re-argument in the Connecticut Supreme Court of Errors, timely filed, was denied without opinion on October 5, 1949 (R. 2254).

During the trial in the Superior Court, a preliminary hearing was held by the court, in the absence of the jury, as to the admissibility of each confession and as to each confession the court concluded it to be voluntary and admissible in evidence and they were later admitted in evidence to the jury (R. 538, 587, 590, 731, 1549, 1551; 656, 663, 669, 673, 731, 1674, 1675).

On October 25, 1946 the assistant manager of a department store in Meriden was shot and killed during the attempted perpetration of a robbery of the store. The identity of the robbers at this time was not known.

On August 22, 1947, Albert Berard was arrested for the crime. On August 23, 1947, about 2:00 A. M., the petitioner was arrested by state police without a warrant on orders of state police commissioner, Edward Hickey, and immediately taken to state police headquarters in Hartford where he was questioned from 3:00 A. M. to 5:00 A. M. by commissioner Hickey, state police officers and the assistant state's attorney and where he was confronted with Berard who made accusations against him.

Petitioner made no incriminating statements concerning the crime. Before leaving the room commissioner Hickey told him he was being held for murder.

The arrest was made under the provisions of 54-h C.S. 1945 which permits an arrest without a warrant under certain circumstances and provides that "Any person so arrested shall be presented with reasonable promptness before proper authority" (R. 532, par. 25.)

At 5:00 A. M. August 23rd the petitioner was locked in a cell at the Hartford state police barracks.

Beginning at 9:00 A. M. that same morning and until about 2:00 P. M. of that day, the petitioner was further questioned in the Hartford state police barracks and then brought to the Bethany state police barracks where he was lodged in a cell in the late afternoon, the cell containing a steel bunk with no mattress or pillow. The petitioner was questioned concerning the crime for over seven and one-half hours on the day of his arrest (R. 119, 124, 167-8, 172-5, 178, 182-3, 241, 243-7, 250, 327-329).

A presentment or indictment of the grand jury is required to hold a person to answer for a crime the punishment of which is death or life imprisonment such as in first and second degree murder. Conn. Const. Art. I, Sec. 9; Secs. 8350-8352 G.S. 1949.

State procedure would have permitted the police to present the petitioner on charges of murder in the Meriden Municipal Court on the morning of his arrest or on any week-day thereafter for

binding over to the Superior Court at New Haven, being the process of law by which the petitioner would have been held until the Superior Court would have taken cognizance of the charges against him by reason of an indictment by a grand jury. *State* vs. *Chin Lung,* 106 Conn. 701, 720.

The petitioner could also have been presented in the Superior Court of New Haven County upon an information filed by the state's attorney for an order of court holding the petitioner until indictment by a grand jury. Sec. 8764, G.S. 1949.

The petitioner was never presented in the Meriden Municipal Court at any time and was not presented in the Superior Court for New Haven County until September 17, 1947, being the day of his indictment by a grand jury.

Instead of being presented in court, pending indictment, the petitioner was committed to the Bethany state police barracks under a warrant issued August 23, 1947 by Coroner James J. Corrigan. On that same day, Coroner Corrigan issued his warrant committing the petitioner's accomplice, Albert Berard, to the New Haven county jail.

In connection with the issuance of the warrant by the Coroner, it was his own testimony that he knew "it was the desire of the investigating authorities to talk with Buteau further." (R. 40-41). On August 23, 1947 the coroner knew he could have summoned the petitioner before him for questioning, but did not do so because he was of the opinion that the investigation had not yet proceeded to the point he "thought most fruitful" against Buteau and he decided "the most expeditious way" was to leave the petitioner with the state police, (R. 49-50); that he committed the co-defendant, Berard, to the New Haven county jail at the same time because the "investigation had advanced to a more complete stage with regard to him than with regard to Buteau," (R. 41); that he committed the petitioner to the state police barracks "to make it easier for the Meriden police and the state police to talk to Buteau," (R. 41) and "because we decided that the investigation might proceed with greater facility if he

were at the Bethany barracks," and because "it would give the state police greater chance to confer with him and a better opportunity than if he were at the jail." (R. 40-41); that a further reason for committing the petitioner to the state police barracks was to prevent the petitioner from having the advice of fellow prisoners in the county jail (R. 1982); that to assist the state police in questioning the petitioner further, he ordered the petitioner "kept incommunicado" (R. 43); that it was his intention "no person be permitted to communicate with Buteau" except with the coroner's consent (R. 43; 533, par. 33); that it was the intention of the coroner that as long as the petitioner "remained in the custody of the state police he could be left at the barracks or taken to any other proper place," and that by "proper place" the coroner meant "the scene of the crime, the state's attorney's office, the coroner's office, the jail, the City of Meriden,—any place where the police could get information from Buteau concerning this crime . . . any place the police thought fit to take him if they could get information about the crime," (R. 47-48); and that whether or not the petitioner "might be brought to a certain place would be determined by the state police," (R. 47-48) and his sole purpose was to aid the police in getting information from the petitioner (R. 48; 533, par. 32, 33). All the foregoing testimony of the coroner is undisputed.

Petitioner was held on the authority of coroner Corrigan's warrant in private secret custody, without counsel until after the taking of petitioner's statement on August 30, 1947 by Deputy Coroner, Nathan G. Sachs.

On August 25, 1947 the petitioner was taken to Meriden by order of commissioner Hickey and followed his accomplice, Berard, at a short distance while Berard went over the route and areas connected with the crime, each being accompanied by state police officers and representatives of the state's attorney's office. On this day the petitioner was questioned over a period of four and one-half hours concerning the crime. (R. 179-182, 184-186, 189, 197, 198, 251, 252, 255, 259-261.)

In the meantime, members of the petitioner's family were not able to locate him. His family with whom the petitioner lived, learned of his arrest through a radio broadcast at noon on the day of his arrest. State police officers who called at the home that same morning talked with the petitioner's sister but failed to give her any information concerning the arrest or whereabouts of the petitioner notwithstanding her inquiries of them (R. 296-300).

For the purpose of aiding the petitioner, his sister tried to locate him beginning August 23, 1947 on numerous occasions by making inquiries of the Meriden city police, the New Haven county jail, by attempting to locate the coroner of the county without success, by inquiring of the deputy coroner and members of the state police department but was unable to get any information as to the whereabouts of her brother until August 28, 1947 (R. 300-302).

On August 27, the petitioner's sister inquired of the state police who called at her home but was given no information as to the location of her brother (R. 302-303).

On August 28, 1947 the petitioner's sister (Elaine Buteau) was taken by state police officers to the Bethany state police barracks on orders of Captain Carroll for the purpose of Captain Carroll trying to influence her to persuade her brother to give information on the crime (R. 200-202, 212, 304-305). He was questioned in the presence of his sister but made no incriminating statements. At this time, Captain Carroll told the petitioner that two state police officers had seen a bank book in the name of Albert Berard that showed a deposit of either $5,000. or $8,000 (R. 215-216, 231). The truth of the existence of said deposit was never afterwards proven. Petitioner was questioned further that same evening after his sister left and for the first time admitted that on the night of the crime he had been in the store where the crime had been committed (R. 535, par. 47). On this day he was questioned for a substantial part of five hours (R. 200-202, 205, 209, 212-215, 223-230, 261, 263, 273, 304).

That evening, Captain Carroll decided to take the petitioner the next day to the state's attorney's office for further questioning.

On August 29, 1947, petitioner was questioned concerning the crime by Captain Carroll and a county detective for about one hour at the Bethany barracks. By previous arrangement, he was then brought to the state's attorney's office, New Haven arriving there about 10:30 A. M. and except for a short period for lunch and when he was kept in the prisoner's cage in the criminal court room, the petitioner was held in the state's attorney's office until about 6:00 P. M. During these hours the petitioner was questioned at great length by the state's attorney, Captain Carroll and a county detective. Berard was present during a substantial part of the questioning and made accusations against the petitioner. On this day he had his first change of clothing since his arrest and was permitted to shave for the first time and was questioned even while shaving. He was questioned on this date for a total of about seven hours (R. 278-279, 281-282, 286-287).

The first confession of the petitioner was taken by the deputy coroner on August 30, 1947 by arrangement with the state's attorney (State's Exhibit 44, R. 28). This questioning took three and one-half hours (R. 592, 606, 621-622, 652). At the conclusion of the statement, the petitioner was committed by a warrant of that date issued by the deputy coroner to New Haven county jail, the place of confinement for prisoners awaiting trial in New Haven county (Par. 59, R. 537).

Notwithstanding the direction of the warrant committing the petitioner to jail (Defendant's Exhiibt "K," R. 27, 2031-2032, R. Vol. I, page f), the police brought the petitioner to Meriden where by arrangement they met Captain Carroll and while in their custody petitioner was questioned and taken into the store and other places connected with the crime (R. 387, 392-394, 407, 417).

At no time did coroner Corrigan question the petitioner or Berard or any witnesses or perform any of the statutory functions connected with a coroner's inquest (Sec. 473, 475, 476,

478, 479, 485, G.S. 1949; R. 18-19, 34, 35, 38, 39, 49, 50, 51; 533, par. 30-32).

Section 485, G.S. 1949, requires that a coroner must be conducting an inquest in order to be authorized to arrest and commit to jail or other proper place any person whom he has reason to suspect of having criminally caused the death of another.

The deputy coroner has the same powers as the coroner while acting in his place (Sec. 468, G.S. 1949).

The deputy coroner started the inquest on the night of the crime and after the arrest of the petitioner completed the inquest and filed his statutory finding. (R. 1122, 1141). He did not know the place of confinement of the petitioner under the coroner's warrant until August 29, 1947 when he learned it from the state's attorney (R. 1142, 1148).

It is not disputed that the petitioner, on the day of his arrest, told Captain Carroll that when the time came he expected the public defender to represent him (R. 182-184; 2246-2247). The stenographic statement of August 30, 1947 of the petitioner obtained by the deputy coroner does not show that the deputy coroner informed or questioned the petitioner concerning his statutory right to have counsel present (R. 1126; Sec. 477, G.S. 1949). Whether any such advice was given before the statement of August 30, 1947 was begun, is not recalled by the petitioner (R. 351) nor by the deputy coroner (R. 1126).

On September 3, 1947 the petitioner appeared in the Superior Court for the specific purpose of having a special public deefnder appointed to represent him because he was without funds and because the public defender was representing the accomplice, Berard, at which time the court stated counsel would be appointed to represent the petitioner.

These proceedings ended at 12:00 noon that day. Petitioner was not then returned to New Haven county jail, but was kept in police custody in the state's attorney's office until 10:00 P. M. during which time his statement of September 3, 1947 was pro-

cured (State's Exhibit 45, R. 745-752). This statement was procured by Captain Carroll when he and the state's attorney knew of the impending appointment of counsel to represent the petitioner and before the petitioner had the benefit or advice of any counsel. The special public defender to represent the petitioner was appointed September 4, 1947.

The required application for the appointment of a special public defender for the petitioner was not made by the state's attorney until after the confession of August 30, 1947 had been procured.

The petitioner was given a warning against self incrimination on the morning of his arrest and again was so warned just before the procurement of the first and second confessions. The petitioner contended in his state appeal that those warnings were merely recitals to formalize constitutional requirements and became a cloak for an inquisitorial procedure pursued to wring these confessions from him (Brief of petitioner in state appeal, p. 63-64).

The introduction into evidence of his two confessions compelled the petitioner to take the witness stand in his own behalf (R. 2243; State brief of petitioner, p. 66).

Petitioner contended in the state appeal that "proper authority" before whom under the state law he was to be presented with reasonable promptness, meant a court of law (Petitioner's state brief, p. 19-20) and not a coroner.

The function of a coroner under state law concerns an investigation of the cause and manner of a death suspected of being caused by the criminal act, omission or carelessness of another (Section 473, G.S. 1949). In a proper case he communicates the import of his finding to the prosecuting attorney (Section 478, G.S. 1949) and files his report with the clerk of the Superior Court (Section 479, G.S. 1949). His inquest involves the taking of testimony of the medical examiner and other witnesses deemed necessary (Section 475, G.S. 1949). In connection with his inquest, he may cause a person suspected of the crime to be ar-

rested and committed to jail or other proper place and take bail or commit without bail under certain circumstances (Section 485, G.S. 1949) but may not keep a person under arrest longer than twenty-four hours after his finding (Sec. 485, G.S. 1949).

His functions and powers do not include the presentation before him of an accused on criminal charges for the purpose of taking a plea or to furnish proof of probable cause or of a prima facie case against him, or for the purpose of binding the accused over to answer in the court having proper jurisdiction of the crime. The coroner examines witnesses merely for the purpose of making his report to the prosecuting attorney and clerk of the court. The procedure connected with the inquest does not provide that a suspected person has the right to be confronted by witnesses, examined by the coroner nor to cross examine any such witness nor to present witnesses on his behalf (Title V, Chap. 20, G.S. 1949). A coroner's inquest under state procedure is not necessary to the indictment or presentation of an accused on criminal charges involving a homicide.

The deputy coroner is appointed by the coroner who is appointed by the judges of the Superior Court upon recommendation of the state's attorney (Sections 466, 468, G.S. 1949).

Petitioner presented as a principal issue in the state appeal the claim that his conviction based upon his confessions used in evidence violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution (State Brief, p. 1-2) which was passed upon by the State Supreme Court of Errors (R. 2249).

II

This Court Has Jurisdiction

The petitioner respectfully submits that this court has jurisdiction of this petition for writ of certiorari under Title 28, United States Code, Section 1257 (3), (formerly 28 U.S.C.A., Section 344 (b)), said petition being one to review the final judgment

of the Supreme Court of Errors of the State of Connecticut, in a capital criminal case, rendered August 16, 1949, said state court being the highest court in the state in which a decision could be had.

A motion to reargue, filed August 25, 1949, being within the time prescribed by the rules of practice (Section 399 as amended, Practice Book, 1930) was denied October 5, 1949 and all remedies in the state courts have been exhausted.

The judgment of the Supreme Court of Errors (R. 2252) confirmed the judgment of the Superior Court finding the petitioner guilty of first degree murder and sentencing petitioner to death (R. 7).

The federal questions have been carefully preserved in the record. On trial, at the conclusion of the preliminary hearing held to determine the admissibility of the confession of August 30, 1947, the petitioner claimed it was not admissible in evidence because violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution (R. 538). The court overruled this claim and held the confession voluntary and admissible (R. 587, 590). This ruling was made assignment of error #49 in the state appeal (R. 731). The court also overruled the objection of the petitioner that this confession was not admissible in evidence to the jury (R. 1549-1551). This ruling of the court was made assignment of error #48 in the state appeal (R. 731).

On trial, at the conclusion of the preliminary hearing held to determine the admissibility of the confession of September 3, 1947, the petitioner claimed that it was not admissible in evidence because violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This was done by reference to the constitutional claims made in connection with the first confession (R. 656, 663, 669). The court overruled this claim and held the confession voluntary and admissible (R. 673). This ruling was made assignment of error #51 in the state appeal (R. 731). The court overruled the objection of

the petitioner that this confession was not admissible in evidence to the jury (R. 1674, 1675). This ruling of the court was made assignment of error #52 in the state appeal (R. 731).

In the appeal to the State Supreme Court of Errors, the petitioner contended in oral argument and in his brief (State appeal brief, p. 1, 60) that the circumstances under which the two confessions were procured and their use in evidence against him deprived him of his life and liberty without due process of law in violation of the Fourteenth Amendment of the United States Constitution. These constitutional claims were overruled by the State Supreme Court of Errors (R. 2249).

Necessarily included in the decision on the constitutional issues were the factors of the failure of compliance with the prompt presentation statute, Section 54-h, C.S. 1945, and all illegal detention because petitioner claimed, orally and in his state appeal brief, the element of illegal detention as a factor to be considered upon his constitutional claims (State brief, p. 60) and under the rules of state appeal practice petitioner's brief was deemed a part of his opening argument (Conn. Practice Book, p. 119, Sec. 405).

The opinion of the state Supreme Court of Errors is included in the record (R. 2242-2251) and a certified copy of the petitioner's brief in the state court appeal is filed with this petition.

III

The Questions Presented

The questions presented to this court are:

1. Whether the conviction of the petitioner, based on all the undisputed facts of the case, resulted from the procurement and use of either or both of his confessions obtained under circumstances which should have barred their use against him because violative of his constitutional rights as guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2. This question presents the issue whether in confirming the conviction, illegal detention based on the illegal warrant of the coroner, the detention thereunder and the abuse of the coroner's powers, should have been excluded as a factor in considering the coercive character of the petitioner's confessions used against him.

3. A further issue presented is whether the position of the state Supreme Court of Errors was correct that because "the situation previous to his (petitioner's) appearance before the deputy coroner can only be regarded as a remote circumstance," (R. 2247) all the circumstances previous to August 30, did not need to be considered on the question whether there was any illegal detention during this time thereby (a) excluding from their consideration the question whether the coroner's warrant of August 23 was illegal and any detention thereunder illegal (R. 2245) and (b) excluding from their consideration all the circumstances prior to August 30th as factors upon the coercive character of the confession rendering them inadmissible because a denial of due process under the Fourteenth Amendment of the United States Constitution.

The questions present the issues whether the position of the Connecticut Supreme Court of Errors is correct in holding:

(a) That there was no need to consider the petitioner's claim that the coroner's warrant of August 23, 1947 was illegal and petitioner's arrest and detention thereunder illegal (R. 2245).

(b) That the presentation before the deputy coroner was similar in legal effect to a presentation before a "committing magistrate" under the rule followed in the federal courts that a "coroner is a 'committing magistrate' " and that the presentation before the deputy coroner was not "unreasonably delayed" and thereby holding by inference that the presentation of the petitioner before the deputy coroner on August 30, 1947 was a compliance with Section 54-h C.S. 1945 (R. 2248) and thus in effect denying the petitioner's claim (State appeal brief p. 20-21) that under Sec. 54-h C.S. 1945 he should have been presented

in the Meriden Municipal Court or the Superior Court with reasonable promptness and prior to September 17, 1947.

(c) That the "situation" previous to the petitioner appearing before the deputy coroner on August 30, 1947 can only be regarded as a "remote circumstance," (R. 2247) upon the question of the coercive character of the confessions.

(d) That "the most that can be claimed is that he (petitioner) was not promptly returned to jail but was kept in the court house until he himself had expressed the desire to make a statement," (R. 2248) to the claim of the petitioner that his confession of September 3, 1947 was procured by State Police Captain Carroll as a result of illegal detention due to petitioner's failure to be presented under section 54-h C.S. 1945 and of his failure to be promptly returned to the county jail to be there confined in accordance with the directions of the warrant of August 30, 1947 of the deputy coroner which together with certain factors occuring since his arrest which were still present rendered his confession not admissible in evidence.

(e) That because all the cases in the United States Supreme Court dealing with the rule of the federal court barring the use of confessions when violative of a speedy presentation statute have concerned confessions made to police officers, "we doubt very much that the federal court would apply it to an examination made by a coroner in carrying out his statutory duties of investigating an untimely death" (R. 2247) and that therefore the reasons for the barring of confessions under such federal rule do not apply to the case of the coroner, or deputy coroner, conducting an inquest.

(f) That "neither the constitution of the United States nor the constitution of Connecticut requires that one arrested for a crime shall be promptly taken before a committing magistrate; all they provide is that he shall have the right to 'a speedy and public trial.' United States Constitutional Amendment VI; Connecticut Constitution, Article I, Section 9" (R. 2248) in view of the Due Process Clause of the Fourteenth Amendment to the United States

Constitution and the provisions of Section 54-h, C.S. 1945 requiring that a person arrested without a warrant be "presented with reasonable promptness before proper authority," which petitioner claimed was a court of law and not a coroner.

(g) That the "trial court was warranted in concluding" that neither confession "was the result of any illegal detention or of coercion, physical or psychological" (R. 2249) thereby approving the trial court's ruling made at the conclusion of the preliminary hearings held to determine the voluntary character and admissibility of the confessions in which the trial court ruled that there was no illegality of detention either by virtue of the claimed failure to be presented under Section 54-h, C.S. 1945, or by virtue of the warrant of coroner Corrigan of August 23, 1947, in which ruling the trial court stated that in the solution of the crime by the various officers of the law "under the leadership and with the coordination of the office of the state's attorney" that the arresting officer "was not compelled by the provisions of Section 54-h to wreck the investigation, to stand on some mandate or sanction he felt compelled him to do something different from the senior officers who were over him in this investigation; that the disposition of the man, upon his being taken into custody and being apprehended was finally determined by the coordinator of the investigation, the state's attorney, and if he was of the opinion the investigation would be best served by indicating to his fellow worker, the coroner, that a warrant should be issued, instead of indicating to his fellow worker, the superintendent of the state police, the man must be taken forthwith to Meriden, that action on the part of the state's attorney, that information to his fellow worker, the coroner, transcended any other mandate in the law, and the action of the coroner being in and of itself legal was proper and the detention of Buteau from thenceforth under the provisions of that warrant was legal and proper (R. 667).

(h) That there were present in the instant case "no such circumstances as have led the Supreme Court of the United States to hold in certain cases that the conviction of accused persons upon the basis of forced confessions they had made were

in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution" (R. 2249) and in denying the petitioner's motion to reargue (R. 2253-2254).

IV

Reasons Relied on for Allowance of Writ

1. A substantial federal question, not heretofore determined by this court, presents itself as to whether an appearance by an accused before a coroner or deputy coroner, for the purpose of that official conducting an inquest is a compliance with a state prompt-presentation statute so as to eliminate the failure of the arresting officers or prosecutiong officials to have "presented" the accused "with reasonable promptness before proper authority" for a preliminary hearing on charges under a statute as one of the material factors in considering whether circumstances resulting in the procurement and use in evidence of a confession denied the accused the protection of the Due Process Cluase of the federal Fourteenth Amendment. In this regard the case presents the question also whether the scope of authority and function of a coroner constitute him the proper type of magistrate before whom a preliminary hearing on charges should be had within the intendment of the protection afforded by the federal Due Process Clause, in view of the existence of a state prompt-presentation statute.

2. A substantial federal question not heretofore determined by this court presents itself with respect to the abuse of the power of a coroner acting in concert with police and prosecuting officials, in arresting and committing a person suspected of committing a murder to the secret private custody of the state police for the purpose of aiding the police to secure a confession and involving the avoidance of a prompt-presentation statute, resulting in the procurement and use in evidence of a confession in a conviction in a capital case as being violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

(a) This question presents the issue whether police officers who have arrested without a warrant a person suspected of murder and who, together with the prosecuting attorney involved in the case, should present him with reasonable promptness before proper authority under a state statute, for a preliminary hearing on charges, which would have caused the accused to be detained in a county jail pending indictment, may avoid and delay such a preliminary hearing on charges and acquire the private secret custody of the accused for interrogation purposes, by the concerted and calculated action of the arresting police, the prosecuting attorney and the coroner, until after the police and prosecuting attorneys have been able to exert their pressure to break the accused under circumstances which would have been a denial of the protection of the federal Due Process Clause so as to invalidate any confession had the same been procured by the police and then for said police and the prosecuting authorities to escape such a consequence by having the deputy coroner afterward take the statement of the accused in the course of an inquest, which may be used as a confession under state practice, when the confession so taken by the deputy coroner in connection with the inquest is no less the fruit of the inquisitorial procedure on the part of the police and prosecuting authorities and of the circumstances resulting in the making of the confession which would have barred it in the first instance because constituting a denial of the right guaranteed by the federal Due Process Clause.

(b) There is also involved in this question the abuse on the part of the coroner, who is a nominee of the prosecuting attorney in the case, acting in concert with the police and prosecuting officials in yielding the accused to the private secret custody of the police for the avowed purpose of extracting a confession and then after many days of persistent questioning, while the accused is without benefit of counsel, to have the deputy coroner, who is the appointee of the coroner, take the confession in the course of an inquest, which the deputy coroner had started ten months previous to the arrest and had the right to start and complete, which confession is then offered in evidence as the product of an

inquest legally and duly conducted by the deputy coroner, said confession being held by the state Supreme Court of Errors to have had only a "remote" connection with the events leading up to and preceding the statement so taken by the deputy coroner and thus approving a procedure whereby the police and prosecuting officials and the coroner acting in concert utilize the inquest of the deputy coroner as a cloak in procuring a confession under circumstances which should have barred its use because denying the protection of the federal Due Process Clause.

(c) Included in the foregoing is the claim that the coroner, in issuing his warrant had no right to do so because he was not conducting an inquest and that consequently the arrest and detention thereunder of the petitioner was illegal.

(d) Also contained in the foregoing is a substantial federal question whether the combination of the procedures of the police, prosecuting officials and coroner, as disclosed above, establishes a criminal procedure in the state, in connection with the procurement of confessions from an accused, which is inquisitorial in nature and subversive of the accusatorial system of criminal justice as guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

3. The said Supreme Court of Errors of Connecticut, in the above case, has decided a federal question of substance in relation to the confession of August 30, 1947 of the accused, taken by the deputy coroner, and in relation to his confession of September 3, 1947, taken by State Police Captain Carroll, in favor of the respondent herein, by denying the petitioner's claim that they were coerced and by holding both of said confessions to have been voluntary and admissible in evidence and not violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution, which decision in affirming the conviction of murder in the first degree is not in accord with the applicable decisions of this court, including the following cases:

Watts v. *State of Indiana*, 338 U. S. 49, 69 S. Ct. 1347.

Turner v. *Commonwealth of Pennsylvania,* 338 U. S. 62, 69 S. Ct. 1352.

Harris v. *State of South Carolina,* 338 U. S. 68, 69 S. Ct. 1354.

Haley v. *State of Ohio,* 332 U.S. 596, 68 S. Ct. 302.

Malinski v. *People of State of New York,* 324 U.S. 401, 65 S. Ct. 781.

Ashcraft v. *State of Tennessee,* 322 U.S. 143, 64 S. Ct. 921.

Chambers v. *State of Florida,* 309 U.S. 227, 60 S. Ct. 472.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Errors of the State of Connecticut, commanding that court to certify and to send to this Court for its review and determination on a day certain, to be therein named, a full and complete transcript of the records and all proceedings in the case numbered and entitled in its docket, No. 3024, *State of Connecticut* v. *James Buteau* and that the judgment of the Supreme Court of Errors of the State of Connecticut may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Court may seem proper.

Dated at New Haven, Connecticut, this 20th day of December, 1949.

JAMES BUTEAU,
By PHILIP R. PASTORE,
Counsel for Petitioner.

WILLIAM T. HOLLERAN,
New Haven, Connecticut,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1949

NO.

JAMES BUTEAU
Petitioner

vs.

STATE OF CONNECTICUT
Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below

The opinion of the Supreme Court of Errors of the State of Connecticut, which disposed of this case, has not yet been officially reported. It is printed in the record (R. 2242).

II

Jurisdiction

(1) The judgment of the Supreme Court of Errors of the State of Connecticut to be reviewed is dated August 16, 1949 (R. 2252). A motion to reargue, filed within the time prescribed by the rules of practice, was denied October 5, 1949 (R. 2252).

(2) The jurisdiction of this court is invoked under Title 28, United States Code, Section 1257 (3), (formerly 28 U.S.C.A., Section 344 (b)). The specific claims as to the jurisdiction of this court are set out in the foregoing petition under the heading II on Jurisdiction and are incorporated here by reference.

(3) The judgment of the Supreme Court of Errors (R. 2252) confirmed the judgment of the Superior Court finding the petitioner guilty (R. 7).

III

Statement of the Case

This has already been stated in the petition under I, Summary Statement of the Matter Involved, which is hereby adopted and made a part of this brief. Any necessary elaboration of the facts involved will be made in the course of the argument.

IV

Specification of Errors Relied Upon

It is respectfully submitted that the Supreme Court of Errors erred:

1. In holding that the confessions of August 30, 1947 and September 3, 1947 of the petitioner were voluntary and admissible in evidence and that their procurement and use against the petitioner resulting in his conviction was not a violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2. In holding that there was no need to consider whether the warrant of the coroner, dated August 23, 1947 was illegal or any detention of the petitioner thereunder illegal.

3. In holding that the appearance of the petitioner before the deputy coroner on August 30, 1947 was a compliance with the provisions of Section 54-h, C.S. 1945 requiring the petitioner to

be "presented with reasonable promptness before proper authority."

4. In declining to consider, whether under Section 54-h, C.S. 1945, the petitioner should have been presented with reasonable promptness before a court.

5. In holding that when the petitioner's confession of August 30, 1947 was taken by the deputy coroner that the petitioner was not under illegal detention resulting from the failure to comply with provisions of Section 54-h C.S. 1945 regarding presentation and resulting from the illegal detention under the coroner's warrant of August 23, 1947.

6. In holding that the circumstances and the situation existing as to the petitioner prior to August 30, 1947 was only a remote circumstance in relation to the confession of August 30, 1947 taken by the deputy coroner.

7. In holding that when the petitioner's confession of September 3, 1947 was taken by Captain Carroll that the petitioner was not under illegal detention resulting from the failure to comply with provisions of Section 54-h C.S. 1945 regarding presentation and from the failure to comply with the directions of the deputy coroner's warrant of August 30, 1947.

V

Summary of Argument

A

The conviction of murder and sentence of death of the petitioner resulting from the procurement and use in evidence against him of confessions obtained under circumstances rendering them inadmissible deprived the petitioner of life and liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

B

The confession secured by the deputy coroner was not admissible in evidence because it was the result of a procedure, involving the abuse of the power of the coroner, the state police and prosecuting officials, acting in concert, which was subversive of the accusatorial system in the enforcement of criminal law and violative of the rights guaranteed under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

VI

Argument

A

The Confessions Should Have Been Excluded

Reference is hereby made to the statement of undisputed facts set forth in I, Summary Statement of the Petition, and is not repeated here for the sake of brevity.

All the circumstances of the situation resulting in the procurement and use in evidence against him of the confessions of the petitioner denied him life and liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

Watts vs. *State of Indiana*, 338 U.S. 49, 69 S. Ct. 1347.

Turner vs. *Commonwealth of Pennsylvania*, 338 U.S. 62, 69 S. Ct. 1352.

Harris vs. *State of South Carolina*, 338 U.S. 68, 69 S. Ct. 1354.

Haley vs. *State of Ohio*, 332 U.S. 596, 68 S. Ct. 302.

Malinski vs. *People of State of New York*, 324 U.S. 401, 65 S. Ct. 781.

Ashcraft vs. *State of Tennessee*, 322 U.S. 143, 64 S. Ct. 921.

Chambers vs. *State of Florida*, 309 U.S. 227, 60 S. Ct. 472.

The procurement of the confessions was the result of the pressure of the police and prosecuting authorities, aided by the coroner who abused his powers of office, all acting in concert, until the petitioner broke and yielded to the influences of the calculated endeavor of these officials to obtain confessions from him to be used to convict him.

Following his arrest at 2:30 A. M. on Saturday, August 23, he should have been presented for a hearing in the Meriden Municipal Court. This could have been done on the day of his arrest or on any business day thereafter but was never done. This would have been a presentation "before proper authority" under Section 54-h, C.S. 1945. This is accepted procedure in order to hold an accused until the Superior Court takes cognizance of the charge against him.

State vs. *Chin Lung,* 106 Conn. 701, 720.

The petitioner could also have been presented, under Section 54-h C.S. 1945, in the Superior Court at New Haven, on the day of his arrest or on any business day thereafter, upon an information issued by the state's attorney, for the purpose of having the court order the petitioner held in custody until indictment by a grand jury. *Section* 8764, G.S. 1949. *State* vs. *Chin Lung,* supra, p. 719. Instead of being presented in court, the petitioner was kept in the private secret control of the state police in the Hartford state police barracks until 2:00 P. M. on the day of his arrest during which time he was questioned by the state police and a New Haven county detective who tried to get a statement from him from 9:00 A. M. that morning, this being in addition to the questioning between 3:00 A. M. and 5:00 A. M. earlier that morning by state police and other officials in the police commissioner's office.

A presentation in either the Meriden Municipal Court or the Superior Court on that morning would have resulted in the petitioner being committed to the New Haven county jail where he would have been confined pending indictment and trial. In order to afford the state police and the state's attorney and his

agents opportunity for the further questioning of the petitioner, since he had in no way incriminated himself up to this time, a warrant was obtained from the New Haven county coroner, committing the petitioner, not to New Haven county jail, where Berard, the petitioner's co-defendant was confined by him at the same time, but to the Bethany state police barracks under a statute authorizing a coroner to commit to "the county jail or other proper place" a person suspected in connection with an untimely death "in regard to which he (the coroner) is holding an inquest." This warrant was issued by the coroner at the request of the state's attorney and the petitioner was committed to the Bethany state police barracks with the consent of the state police commissioner.

The issuance of this warrant by the coroner was an abuse of power because he was not conducting and did not conduct an inquest in this case and because the issuance of his warrant was not in connection with an inquest but, upon his own testimony, for the purpose of aiding the police in their endeavor to secure a confession. The inquest had been started by the deputy coroner who ultimately completed it.

Petitioner was confined to Bethany police barracks from August 23, 1947 to August 30, 1947 on the authority of the coroner's warrant and because of the illegality of this warrant and the failure to present the petitioner before proper authority, under Section 54-h during this period, his detention was illegal and an important factor in the procurement of the confessions from him.

> "To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process."
>
> *Watts* vs. *State of Indiana*, 69 S. Ct. 1347, 1350.

> "Detention without arraignment is a time-honored method for keeping an accused under the exclusive control of the police. They can then operate at their leisure. The accused

> is wholly at their mercy. He is without the aid of counsel or friends; and he is denied the protection of the magistrate. We should unequivocally condemn the procedure and stand ready to outlaw, as we did in *Malinski* vs. *People of the State of New York,* 324 U.S. 401, 65 S. Ct. 781, 89 L. Ed. 1029, and *Haley* vs. *State of Ohio,* 332 U.S. 596, 68 S. Ct. 302, 92 L. Ed. 224, any confession obtained during the period of the unlawful detention. The procedure breeds coerced confessions. It is the root of the evil. It is the procedure without which the inquisition could not flourish in the country."
>
> *Watts* vs. *State of Indiana,* supra, p. 1351.

The denial of a prompt examining trial in violation of the required state procedure "is a fact for consideration on an allegation that a confession used at the trial was coerced. Cf. *McNabb* vs. *United States,* 318 U.S. 332, 340; *United States* vs. *Mitchell,* 322 U.S. 65."

Lyons vs. *Oklahoma,* 322 U.S. 596, 598.

This factor was also so considered in *Watts* vs. *State of Indiana,* supra, in *Turner* vs. *Commonwealth of Pennsylvania,* supra, and *Harris* vs. *State of South Carolina,* supra.

The coroner is appointed by the judges of the Superior Court upon the recommendation of the state's attorney. Sec. 466 G.S. 1949. The deputy coroner is appointed by the coroner. Sec. 468 G.S. 1949.

On Sunday, August 24th, petitioner was confined in one of the three cells in Bethany police barracks, the accommodations of which cell consisted of a steel bunk, no mattress, no pillow and one blanket, this being the same cell in which petitioner was confined during his stay at the barracks. He was not questioned on this Sunday.

On August 25th, the petitioner was taken by state police officers to Meriden, brought to the scene of the crime and then in the company of police officers followed closely behind another group consisting of the state police commissioner, state's attorney,

assistant state's attorney, the county detective and state police officers whom Berard, being petitioner's co-defendant, was guiding over the route which they had taken the night of the crime. Petitioner was questioned at the Bethany barracks by police officers on this day both before and after the trip to Meriden for almost four hours but did not incriminate himself in any way.

On August 26 and 27 petitioner was kept in his cell at Bethany barracks incommunicado and the only person in the three-cell block. No confession had yet been made by petitioner.

On August 27th, state police visited the petitioner's home where he lived with his mother, brother and sister, seeking information about him and talked with the petitioner's sister who inquired of the whereabouts of her brother and was falsely told they did not know.

On the morning of August 23rd, state and Meriden police twice visited the home of the petitioner to search it. They talked with petitioner's sister on both occasions but failed to disclose the petitioner's arrest. His family learned of the arrest in a noon radio broadcast of August 23rd. Thereafter up to August 27th petitioner's sister failed to locate him despite her inquiries of the Meriden police, the New Haven county jail, the deputy cononer and state police and no member of the petitioner's family knew of his whereabouts until August 28th.

On August 28th, petitioner's sister was brought to the Bethany barracks by state police officers on orders of Captain Carroll whose purpose in having her brought there was to urge upon her to try to prevail upon her brother to give information to Captain Carroll (R. 202). She told him she did not have the influence over her brother that would make him say things that Captain Carroll wanted him to say (R. 304-305). Petitioner was questioned while his sister was present but made no incriminating statements. The questioning continued for about one hour after she left and during this interrogation petitioner admitted for the first time that he had been in the store the night of the

crime (R. 535, par. 47). On this day the petitioner was questioned for a total of about five hours.

On August 29th Captain Carroll and a county detective arrived at the Bethany barracks about 9:00 A. M. and questioned the petitioner for about one hour and then brought him to the state's attorney's office, New Haven, by previous arrangement with the state's attorney. Except for a short lunch period, petitioner was held in the state's attorney's office from about 10:30 A. M. to 5:30 P. M. during which time he was questioned by the state's attorney, Captain Carroll, county detectives and was confronted with Berard, his co-defendant, who made accusations against him.

On August 29th, the state's attorney and the deputy coroner arranged for the petitioner to be examined by the deputy coroner the next day when the confession of August 30th was taken. The examination lasted over three and one-half hours, during which a county detective connected with the state's attorney's office in New Haven and a state police officer were present. At the conclusion of the hearing, the deputy coroner committed the petitioner to the New Haven county jail but before he was brought there, two county detectives, agents of the state's attorney, brought the petitioner to Meriden and met Captain Carroll by previous arrangement and visited the various places connected with the crime and transversed the route taken by the petitioner the night of the crime.

Any counsel of petitioner would have had the right to be present at the hearing before the deputy coroner (Sec. 477 G.S. 1949). The regular public defender was disqualified from representing the petitioner because he was representing Berard the co-defendant, whose interests conflicted with those of the petitioner (R. 2037). While Captain Carroll and the assistant state's attorney were taking the petitioner from the Hartford police barracks to the Bethany police barracks on August 23rd, they learned of his intention to be represented by the public defender. The state's attorney made no effort until September 3rd, 1947 to have the Superior Court arrange for the appointment of a

special public defender to represent the petitioner. Such appointment was not made until September 4, 1947.

On September 3rd, 1947 the petitioner who had appeared before the Superior Court in connection with the appointment of counsel to represent him was not returned to the county jail at noon when the hearing terminated but instead was kept in the state's attorney's office until about 10:00 P. M., except for a time when he was taken to dinner. Captain Carroll questioned the petitioner between the hours of 3:00 P. M. and 6:00 P. M. and between the hours of 8:00 P. M. and 10:00 P. M. took the confession of September 3rd. This was done notwithstanding that the prosecuting officials knew that the appointment of counsel for the petitioner was imminent. While the petitioner was in the state's attorney's office on this date being interrogated, he was under illegal detention because he had not been presented before proper authority under Section 54-h C.S. 1945 and because the directions of the warrant committing him to the county jail were being violated during all the time that he was in the state's attorney's office being questioned.

Petitioner submits that the procurement and use in evidence of his confession of September 3 violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution because it resulted from all the factors heretofore mentioned rendering his first confession inadmissible and because of the questioning and trip to Meriden on August 30, after the taking of his first confession, and because of the events and questioning in the state's attorney's office on September 3.

The petitioner's appearance before the deputy coroner failed to comply with Section 54-h C.S. 1945 permitting an arrest without a warrant of "any person who such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority." In a case not involving homicide, "proper authority" can mean only a court because the coroner has no jurisdiction. To have it mean otherwise in a case involving homicide

would not afford the protection of a judicial hearing to an arrested person involved in a homicide. The purpose of the statute is similar to that underlying the federal rule laid down in *McNabb* vs. *United States,* 318 U.S 332 at p. 343:

> "Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard—not only in assuring protection for the innocent but also securing conviction of the guilty by methods that commend themselves to a progressive and selfconfident society . . . It aims to avoid all the evil implications of secret interrogation of persons accused of crimes."

Section 239, G.S. 1930 referred to in the foot note, page 342 of the McNabb case as being legislation having a similar purpose to the federal rule is the predecessor of Section 54-h, C.S. 1945.

Such presentation must be before a "proper judicial officer." 6 C.J.S. Sec. 17 (b) p. 618.

The hearing of the coroner is not a judicial examination. *State* vs. *Coffee,* 56 Conn. 399, 414. The function of a coroner is to investigate the cause and manner of death that might be caused by a criminal act, omission or carelessness of another. Sec. 473, G.S. 1949; See also Secs. 475, 476, 478, 479, 480, 485, 486, G.S. 1949. He has power to arrest and commit any person he has "good reason to suspect of having criminally caused the death in regard to which he is holding an inquest . . ." but may not keep any person under arrest longer than twenty-four hours after his finding. Sec. 485, G.S. 1949.

The examination by a coroner of a suspected person does not involve a presentation on any charges, no pleading is required or permitted as in any preliminary examination in court under Connecticut criminal practice and the suspected person is not confronted by nor may he cross examine, any witnesses being examined by the coroner nor may any such suspected person produce any witnesses in his behalf. The coroner has no power to bind

over a suspected person to any trial court. He adjudicates no rights of the parties and lacks the fundamental powers characteristic of a committing magistrate.

The judicial power of the state is vested in such courts as are established by the legislature. Conn. Constitution, Art. V, Sec. 1.

The state police commissioner gave the petitioner a warning against self incrimination on August 23rd but no incriminating statement was made on that date. Petitioner made his first incriminating statement on the night of August 28 to Captain Carroll when he admitted he was in the store the night of the crime. This was the first fruit of the circumstances of his confinement, treatment and questioning and there was no warning against self-incrimination on the evening of August 28. The warning of the deputy coroner on August 30th and of Captain Carroll on September 3, in connection with the confessions of those dates, were but recitals to formalize constitutional requirement. *Haley* vs. *Ohio,* 332 U. S. 596, 601. The pressure of police endeavors had by this time rendered these warnings but empty phrases.

The present case includes factors and circumstances some or all of which were present in other cases in which this court held confessions to be not admissible because violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

In the present case, the first confession followed twenty-eight hours questioning on five days within a period of seven days and the second confession followed a total of 33 hours questioning on six days over an eleven-day period. In the Ashcraft case, supra, the confession followed 36 hours of questioning over one and one-half days; in the Watts case, supra, after not less than 22 hours of questioning over six days; in the Turner case, supra, after 21 hours questioning over four days; in the Harris case, supra, after 20 hours questioning over four days; in the Malinski case, supra, after 10 hours questioning on one day; in the Haley case, supra,

after 5 hours questioning on one day and in the Chambers case, supra, after many hours over a period of eight days.

In the present case, petitioner was not presented before proper authority before the procurement of either confession although he could have been on any of seven days before the first confession and any of ten days before the second confession. In this regard, it compares with the Watts, Turner and Harris cases where there was no presentation before confessions. In the Ashcraft and Haley cases wherein this court ruled the confessions inadmissible, there was no opportunity to present before the confessions were obtained.

Petitioner was held incommunicado, without counsel or friends, except the sister's visit in the presence of police officers on August 28, for seven days before the first confession and without benefit of counsel until after the second confession. These elements are present in most of the federal cases referred to above.

In the instant case, the illegal detention of the petitioner, based on the violation of Sec. 54-h, on the illegal warrant of the coroner and the wilful disregard on September 3 of the directions of the warrant of the deputy coroner and on the collusive effort of the police, prosecuting officials, and the coroner, was a material factor in bringing about the confession. In the Watts, Turner and Harris cases, supra, this element was present and condemned as a means of wringing confessions.

Assuming for argument, that the deputy coroner was "proper authority" under Sec. 54-h, the appearance of the petitioner on August 30th was not with "reasonable promptness" under this section because the delay was the result of deliberate concerted action on the part of the coroner, police and prosecuting authorities to hold the petitioner until after he broke and confessed and such designed evasion of the requirements of prompt presentation of Sec. 54-h rendered the confessions inadmissible because a violation of the federal Due Process Clause.

If either confession used should not have been admitted in evidence, it is reversible error even though petitioner may have testified in his own behalf or the evidence apart from the confession might have been sufficient to sustain the verdict.

Malinski vs. *New York,* 324 U.S. 401, 404, 405.

Petitioner respectfully submits that his confessions were obtained under circumstances which rendered them coercive and made their use at his trial a denial of due process.

B

The Procedure Used to Obtain the Confessions Is Unconstitutional

An examination of the opinion of the Connecticut Supreme Court of Errors in this case shows that the statement given to the deputy coroner, August 30, 1947, which later was used as a confession against the petitioner, was ruled admissible because it was given in connection with "an examination made by a coroner in carrying out his statutory duty of investigating an untimely death," and that the "situation previous to his (petitioner's) appearance before the deputy coroner can only be regarded as a remote circumstance" (R. 2247).

This ruling excluded from their consideration the illegal detention, questioning, treatment and circumstances affecting the petitioner however coercive the situation before August 30, 1949 was or might have been, which should have been considered as relevant and material factors in determining whether there was coercion resulting in the petitioner's first confession and carried over to the second confession.

The ruling renders admissible in evidence a statement taken by a deputy coroner in the course of his statutory duties even though the confession is the fruit of coercion on the part of the coroner, police and prosecuting authorities prior to the deputy coroner's inquest which would have rendered such confession inadmissible had it been procured by police officers.

This sanctions a procedure inquisitorial in nature, subversive of the accusatorial system of administration of criminal justice, which violates the protection guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Watts vs. *State of Indiana,* 69 S. Ct. 1347, 1350.

Whether such procedure meets the constitutional requirements of the Due Process Clause is a matter of importance in the general administration of criminal law.

Conclusion

It is respectfully submitted that this case should be reviewed not only because the decision of the Connecticut Supreme Court of Errors denies the petitioner life and liberty guaranteed to him under the Due Process Clause of the Fourteenth Amendment of the United States Constitution in a criminal prosecution for homicide but also because the decision involves a serious aspect in the administration of state criminal justice in a capital case involving a death penalty in that the police, prosecuting officials and coroner, acting in concert, combined to utilize illegally and abusively the power of a coroner given under a state statute to arrest and commit a suspected person to a "proper place" as an instrument to place the suspected person in the private secret custody of the police for the avowed purpose of interrogation and the procurement of incriminating disclosures.

The practical effect of the decision is to sanction a procedure whereby the deputy coroner's inquest is utilized by the police, prosecuting authorities and the coroner, as a cloak to escape the consequences of their inquisitorial conduct which would have barred from evidence a confession if taken by the police following such conduct.

Petitioner respectfully submits that for all the foregoing reasons, the petition for a writ of certiorari should be granted to review the violation of fundamental standards of procedure guar-

anteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1949

NO. 509

JAMES BUTEAU,
Petitioner

vs.

STATE OF CONNECTICUT,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

Statement of the Case

Facts in amplification and clarification of Petitioner's Summary Statement will appear during the course of the Argument herein. However, at this point it should be noted that in his attack upon the admission in evidence of the confessions of August 30, 1947, and September 3, 1947, Petitioner makes no claim that these confessions are untrue. On the contrary, he corroborated their truth in his testimony at the trial (Opinion below, R. 2250) and confirmed it further in his Claims of Proof (R. 474-483).

II

Argument

Summary of the Argument

Point A

The confessions were altogether voluntary.

Point B

The arrest and detention were legal.

1. The warrant was properly issued by the Coroner rather than by the Deputy Coroner.
2. In view of his presentation before the Coroner, there was no need to present Petitioner before a Court.
3. The State Police Barracks at Bethany was a "proper place" of confinement.
4. The delay in returning Petitioner to jail on September 3, 1947, did not constitute illegal detention.

Point C

The Supreme Court of Errors was correct in holding that the circumstances previous to Petitioner's appearance before the Deputy Coroner had no relation to his confessions.

Point A

The confessions were altogether voluntary.

The facts and circumstances as conceded by Petitioner or as resolved by the State's adjudication are not such as have led this Court to hold that the conviction of accused persons on the basis of forced confessions was in violation of the Due Process Clause of the United States Constitution (See Opinion below, R. 2249).

The Petitioner here is a mature, intelligent and experienced individual.[1] With his record of three earlier convictions he was no novice in his contacts with police or with criminal procedure (R. 237-238, 509). On the very day of his arrest he was lawfully committed to custody by a committing magistrate (see infra Point B). At no time was he handcuffed or bound, roughly or cruelly treated, or subjected to force or violence, either physical or psychological (R. 566). In fact, Petitioner at the trial acknowledged the "very friendly atmosphere between the officers and I" (R. 2159). He was placed in one of the three cells maintained for the confinement of prisoners in a modern State Police barracks (R. 589). He was fed the same meals as were furnished to officers on duty, ate in the officers' dining room (R. 589) and in public restaurants (Finding Par. 51, R. 535), and with good appetite (Finding Par. 20, R. 665). And before any confession whatsoever was made by him, his sister had been permitted to visit him (R. 534-535).

On first being questioned by the Commissioner of State Police, the Petitioner was warned of his Constitutional right against self-incrimination (R. 531). Before taking the statement of August 30th, the Coroner advised him that he had the right to refuse to give testimony and that any testimony he gave might be used against him (R. 536). Similar warning was given by Captain Carroll at the outset of the interview of September 3rd (R. 665).

From his arrest on August 23rd to his first inculpatory statement on August 28th, the question periods were relatively short (R. 589) and the interludes long. Although Petitioner talks glibly of "persistent questioning" and "inquisitorial procedure" (Petitioner's Brief, pg. 17), his own facts fail to support him. His brief necessarily acknowledges the *complete respite from questioning during the first forty-eight hours* of his confinement to

[1]In this connection there should be noted his use and definition of the word "recidivist" (R. 2153-2156); the corrections of spelling and grammar made by him in his statement (R. 2187-2191); his typing of his own statement on one occasion (R. 223).

Bethany Barracks (Petitioner's Brief, pg. 3-5). And then following a question period that was neither intensive nor protracted, (R. 577, Par. 42, R. 534), *another three full days elapsed before Petitioner was again interrogated,* and that questioning took place in the presence of his sister (Finding, Par. 42-43, R. 534, R. 221-222. See also Petitioner's Brief pp. 5-6). On this occasion, it should be noted, Petitioner himself prolonged the interview by calling the officers back after they had departed (R. 223, 238), and then for the first time he confessed his participation in the fatal robbery (Petitioner's Brief, pg. 31; Par. 47, R. 535).[2]

On the day following this confession, in an obvious effort to reconcile differences and establish the truth, the officers arranged for the confrontation of Buteau and his accomplice Berard. Although Petitioner was present for about seven hours, there is no evidence of systematic, persistent interrogation (R. 589). For a large part of this interview, Petitioner subjected Berard to questions (R. 371-374), and his questioning again constituted an explicit acknowledgement of participation in this attempted robbery (R. 2169-2170).

On the next following day, August 30th, the Coroner's examination was made, the admission of which in evidence Petitioner claims has denied him due process of law. This questioning was done, not by relays of police officers, but by the Deputy Coroner in the pursuance of his statutory duty (See infra Point B); not in secret, but with his secretary making the official public record. Can this confession be held to be "the fruit of inquisitorial procedure on the part of the police (Petitioner's Brief, pg. 17), when

[2]Neither on this occasion nor in his confessions of August 30th and September 3rd nor at the trial did Petitioner admit firing any of the fatal shots. His accomplice Berard admitted firing one shot and claimed Petitioner fired the remaining four. The State's ballistics expert testified that two guns were used in firing these bullets. Of course. Petitioner's participation even to the limited extent admitted by him renders him guilty of murder (Opinion below, R. 2243).

in fact the Petitioner had himself summoned the police in order to thrust this same fruit upon them two days before?

The confession of September 3rd which is also claimed to have been erroneously admitted is even more obviously the product of Petitioner's will rather than of police pressure. For four full days immediately preceding this date Petitioner had been free from questioning. His place of confinement during that time was no longer the State Police Barracks, but the county jail. On this date Petitioner was brought to Court, and in his presence the State's Attorney asked the Court to summon a Grand Jury to consider indictments for this murder and to appoint a Special Public Defender for the Petitioner. Almost immediately thereafter, notwithstanding that he knew that the appointment of his counsel was imminent (Opinion below R. 2246), Petitioner himself initiated a discussion (R. 397) with Captain Carroll by stating that he wished to correct his earlier claims and now to acknowledge his ownership of the Beretta pistol that was found in the room of his accomplice. By reason of this disclosure it was agreed that after supper Petitioner would give a corrected statement which constitutes the confession of September 3rd (Par. 18-22, R. 665).

Petitioner never asked for counsel (Opinion below, R. 2246, Finding Par. 18, R. 531; Finding Par. 58, R. 536). His indifference to such representation is well demonstrated by his eagerness to talk directly after the Court "had informed him that a competent, experienced attorney would be appointed to look after his interests" (Opinion below, R. 2246).

Particularly striking proof of the voluntary character of these confessions can be had by reading them (R. 1553, et seq). From them it can readily be recognized that Petitioner was in full possession of "mental freedom" to confess to or deny his suspected participation in this crime. *Lyons* vs. *State of Oklahoma,* 322 U. S. 596; 64 S. Ct. 1208.

It cannot reasonably be contended that the officers should shun Petitioner when on August 28th he summoned them to make his

first incriminating statement, and when on September 3rd he expressed a desire to make a correction in his earlier statements. We submit that if the denial of due process results from the failure to observe that fundamental fairness which is essential to the very concept of justice (*Lisenba* vs. *People of California*, 314 U. S. 219; 62 S. Ct. 280), Petitioner is without standing in this Court. For throughout these proceedings "every consideration was shown to defendant which one arrested for first degree murder could have reasonably expected" (Opinion below, R. 2247).

Point B

The arrest and detention were legal.

1. The warrant was properly issued by the Coroner rather than by the Deputy Coroner.

Petitioner claims that for the Coroner to issue the warrant constituted an abuse of power, since this inquest was being conducted by the Deputy Coroner. True, the Deputy Coroner, acting in the absence of the Coroner, had visited the scene on the fatal night of October 25, 1946. However, he had questioned no witnesses and had taken no testimony. Such limited activity by the Deputy Coroner does not give the Petitioner a vested right to his services so as to preclude the Coroner from acting in the matter at all times thereafter. On the date of arrest some nine months later, the Coroner was available. Accordingly, it was altogether proper that these new devolepments should be referred to him, and that he, rather than his Deputy, should issue the warrant.

During the next following week the Coroner was again absent from the county (R. 1989), and pursuant to Section 258, General Statutes, Revision of 1930 (Appendix infra), his Deputy proceeded with the inquest. Merely because it thus eventuated that, after issuing his warrant the Coroner himself did not conduct the inquest, would not invalidate the warrant so issued nor render its issuance an abuse of power.

2. In view of his presentation before the Coroner, there was no need to present Petitioner before a Court.

Petitioner claims that following his arrest on Saturday, August 23rd, he should have been presented for hearing in the Meriden Municipal Court. However, in presenting Petitioner to the Coroner, the arresting officers acted in full compliance with law. Our Connecticut statute, Section 54H, Cumulative Supplement 1945, provides that "any person so arrested shall be presented with reasonable promptness before proper authority." The Coroner is such "proper authority." He is a "committing magistrate" (Opinion below, R. 2248).

Section 255 of the Connecticut General Statutes, Revision 1930, (Appendix infra) specifically empowers him to "order or cause any person or persons whom he has good reason to suspect of having criminally caused the death in regard to which he is holding an inquest to be arrested and committed to the county jail or other proper place." His process is competent to hold such persons throughout the inquest and for twenty-four hours after his finding. Accordingly, having once been arrested and held on the Coroner's warrant, there was no need in law or in fact to present Petitioner to a Court as advocated by him. If the Legislature had intended that such presentation must be to a Court, it could have and would have said so instead of using the term "proper authority."

Petitioner's statement that "accepted procedure" would require presentation before the Municipal Court of Meriden (Petitioner's Brief, pg. 24) has no basis in fact. In presenting this defendant to the Coroner for commitment, there was no deviation from the long accepted practice in murder cases in this jurisdiction; and a practice explicitly authorized by the Statutes of this State (See Sections 246, 247, 249, 255, 256, Appendix infra). The many phases of the investigation were diligently pursued during the week following the arrest of Petitioner and there was no unreasonable delay in any of the proceedings prior to the examination of Petitioner by the Deputy Coroner on August 30th (Opinion below, R. 2248).

3. The State Police Barracks at Bethany was a "proper place" of confinement.

Petitioner claims further that he should have been committed to the County Jail rather than to the State Police Barracks.

Section 255, General Statutes 1930 specifically empowers the Coroner to commit prisoners "to the county jail or other proper place." This obviously contemplates the selection of places in addition to the county jail. In the exercise of the discretion thus expressly vested in him, the Coroner determined the State Police Barracks at Bethany to be the proper place for the detention of this defendant.

At one point Petitioner concedes that Bethany Barracks was a proper place of confinement (R. 697), but complains of the differential treatment in the confinement of Albert Berard at the county jail (Part K, R. 696). Just as the Coroner can order witnesses kept separate until after they have testified (Section 255, General Statutes 1930), so could he order this defendant and his accomplice held in separate places so that they would not "get messages to each other" (Part N, R. 699; R. 46).

If the Barracks was chosen with the sinister purpose of affording "the State Police and the State's Attorney and his agents opportunity for the further questioning of the Petitioner" (Petitioner's Brief, pg. 24-25), these officials failed singularly to avail themselves of this opportunity. As has heretofore been pointed out (Point A, supra), they made no effort whatsoever to question Petitioner during the forty-eight hours following his confinement at the Barracks and then allowed another seventy-two more hours to elapse before again questioning him.

4. The delay in returning Petitioner to jail on September 3, 1947, did not constitute illegal detention.

The lack of substance of this Petition is glaringly revealed in this claim. Petitioner here contends that the failure to return him to jail promptly at the conclusion of the Court session of September 3rd constitutes illegal detention. It appears that the

Court session adjourned near noon and Petitioner was then taken out to dinner (Par. 15-16, R. 665). Following dinner there was some questioning of Petitioner from time to time and Petitioner expressed a desire to change a statement he had previously made (Par. 17-18, R. 665). It was this voluntary offer on his part which resulted in further delay, both for supper and for the preparation of the statement (Par. 19-22, R. 665). To label this situation "illegal detention" is a transparent misnomer.

Point C

The Supreme Court of Errors was correct in holding that the circumstances previous to Petitioner's appearance before the Deputy Coroner had no relation to his confession and need not be considered.

The claim of illegal detention at the time of the Coroner's examination or when he made the confession of September 3rd is extremely tenuous (Opinion below, R. 2247).

Whether his commitment on August 23rd was by a Court or by a Coroner; whether the signature on the warrant was that of the Coroner or of his Deputy; whether his confinement during the preceding week was in county jail or a police barracks, had no effect on his appearance before the Deputy Coroner on August 30th. On that date, Petitioner was altogether unaware of these alleged irregularities, and at his trial he made no claim that these circumstances induced him to confess. The action of the Deputy in ordering Petitioner to appear for examination was independent of and bore no relation to the preceding circumstances. Without reference to any of these circumstances, he had authority to compel the attendance of the Petitioner as a witness or as a suspect in the investigation he was then conducting (Section 255, Connecticut General Statutes, Appendix).

Even more remote are these circumstances in relation to the confession of September 3rd. The additional feature of "illegal detention" on that date was of Petitioner's own procurement (See Point B 4, supra).

However, even if there were any illegality of detention, under the Connecticut rule, that fact would invalidate a confession only if it has some casual relation to the procurement of the confession. *State* vs. *Zukauskas,* 132 Conn. 450, 458; 45 A. 2nd 289.

The rule followed in the Federal Courts is not obligatory upon State Courts as has been stated in *Townsend* vs. *Burke,* 334 U.S. 736, 738; 68 S. Ct. 1252.

Here it is obvious that the events of the preceding week did not bring about either the confession of August 30th or of September 3rd.

Conclusion

The petition for certiorari does not present sufficient substance or merit to warrant review by this Court. There was no denial of due process of law in the procurement or use of the Petitioner's confessions.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the Petition for a Writ of Certiorari should be denied.

Dated January 24, 1950.

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APPENDIX

Sec. 54H. Arrest without Warrant. Sheriffs, deputy sheriffs, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person shall be taken or apprehended in the act or on the speedy information of others, and members of the state police department or of any organized local police department shall arrest, without previous complaint and warrant, any person whom such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority.

Sec. 246. Autopsy. After a view and inquiry had by the coroner, if he shall have reason to suspect that the death was caused by the criminal act, omission or carelessness of another or others, he may cause an examination or autopsy to be made of the body by the medical examiner or by some other competent surgeon or physician, who shall reduce or cause to be reduced to writing, either at the time of making such examination or autopsy or immediately thereafter, and when practicable in the presence of the body, every fact and circumstance found by such examination or autopsy which tends to show the identity or condition of such body, and the time, manner and cause of such death; which writing he shall subscribe under oath and deliver to the coroner. The taking of the testimony of such medical examiner, physician or surgeon, and of any other person or persons whom the coroner may find it necessary to examine, shall constitute an inquest. The fees of any physician or surgeon for services rendered under the provisions of this section shall be certified and paid in the manner prescribed in Section 262.

Sec. 247. Coroner's jury. The coroner may, by warrant, cause a jury of six judicious men of his county to be summoned before him to assist him in his investigation, which jury shall be by him sworn to diligently inquire under his direction into the cause and manner of such death and to present to him on their oaths and over their signatures a true verdict thereof. The coroner shall instruct such jurors in their duties and as to all questions of law that may properly arise at such inquest; he may adjourn such inquest to meet again at such time and place as he shall think proper and he may order any inquest or any part thereof to be held in private, in which case only

the persons designated by him shall be allowed to remain in the room or place where such inquest is being held.

Sec. 249. Return of result of inquest. The coroner shall reduce to writing, and shall, within ten days after any inquest has been held, return, the testimony of all witnesses examined in the inquest to the clerk of the superior court in his county, together with his report of the inquest, which shall include his finding or the verdict of the jury, and he shall also return to said clerk all certificates sent him by the medical examiner in accordance with section 244 and all similar certificates by him made.

Sec. 255. Power of Coroner in securing evidence. For the purpose of securing evidence, the coroner may enter any and all places in his county; shall have power to issue a warrant for a jury inquest, to compel the attendance and testimony of witnesses by subpoena and capias issued by him or other proper authority and to punish for contempt to the same extent as justices of the peace may in criminal cases; he may order and cause witnesses to be kept separate so that they cannot communicate with one another until they shall have testified; he may order or cause any person or persons whom he has good reason to suspect of having criminally caused the death in regard to which he is holding an inquest to be arrested and committed to the county jail or other proper place; he shall have power to take bail in such cases or to commit without bail when in his opinion the person arrested is guilty of a capital offense and when the proof against such person is evident or the presumption great. When bail shall be taken, it shall be to the state and shall be conditioned for the appearance of the person so arrested before the superior court for such county at its next criminal term. Any person so arrested and admitted to bail may be rearrested and committed by the coroner without bail when, in the opinion of the coroner, the proof shall be evident or the presumption great that such person is guilty of a capital offense. In no case shall any person be kept under arrest by an order from a coroner for a longer time than twenty-four hours after the finding of a verdict by the jury or after the finding by the coroner in such inquest; and, at any time before such finding, whenever the grounds on which a person is so arrested shall cease to exist in the opinion of the coroner, he shall order the release of such arrested person.

Sec. 256. Coroner may issue process. All process, orders and papers issued by a coroner may be directed to any proper officer, and such officer shall serve such papers and process as directed, and,

when requested, shall remain in attendance on such coroner and execute his lawful orders during any inquiry or inquest.

Sec. 258. Deputy coroner. Each coroner shall, for such time as he may designate, appoint a deputy, who shall only act as such in case of the absence from his county or inability of the coroner, and, when so acting, such deputy coroner shall have the same powers and duties as are given to coroners and, while so acting, shall receive the same fees as the coroner in like cases.